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Report of the committee

New York

1916

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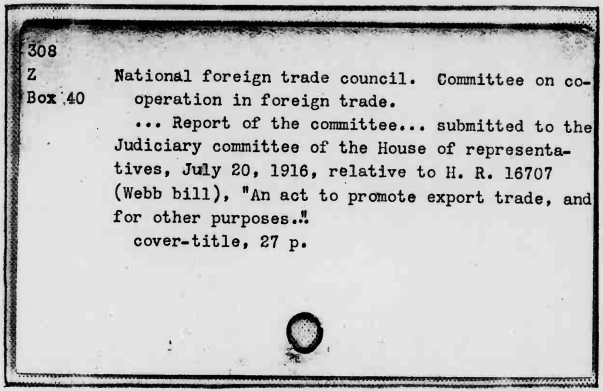

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National foreign trade council. Committee on co-operation in foreign trade.
... Report of the committee... submitted to the Judiciary committee of the House of representatives, July 20, 1916, relative to H. R. 16707 (Webb bill), "An act to promote export trade, and for other purposes."
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Prof. E. R. A. S

"Greater Prosperity Through Greater Foreign Trade"

DEC 2 1 1916

REPORT

of the

Committee on Co-operation in Foreign Trade

of the

National Foreign Trade Council

Submitted to the Judiciary Committee of the House of Representatives, July 20, 1916, relative to H. R. 16707 (Webb Bill), "An Act to promote export trade, and for other purposes."

JULY 21, 1916

We urge Congress to take such action as will facilitate the development of American export trade by removing such disadvantages as may be now imposed by our anti-trust laws, to the end that American exporters, while selling the products of American workmen and American enterprise abroad, and in competition with other nations, in the markets of the world, may be free to utilize all the advantages of co-operative action in coping with combinations of foreign rivals, united to resist American competition, and combinations of foreign buyers equipped to depress the prices of American goods.

Issued by the
NATIONAL FOREIGN TRADE COUNCIL
India House, Hanover Square, New York City

NOTE: H. R. 16,707 has since, in amended form, been favorably reported by the Judiciary Committee as H. R. 17,350.

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Committee on Co-operation in Foreign Trade

NATIONAL FOREIGN TRADE COUNCIL

Chairman, JOHN D. RYAN, President, Anaconda Mining Company, New York City.

J. A. G. CARSON, President, Carson Naval Stores Co., Savannah, Ga.

JAMES A. FARRELL, President, United States Steel Corp., New York City.

H. C. LEWIS, Manager, National Paper and Type Company, New York City.

WILLIAM H. RUSSE, President, Russe & Burgess, Inc., Memphis, Tenn.

THEO. B. WILCOX, Portland Flouring Mills Company, Portland, Ore.

ROBERT H. PATCHIN, Secretary, National Foreign Trade Council, New York City.

NATIONAL FOREIGN TRADE COUNCIL

The first National Foreign Trade Convention at Washington, May 27-28, 1914, recognized the need of an organization which should "endeavor to co-ordinate the foreign trade activities of the nation," and authorized the creation of the National Foreign Trade Council for that purpose.

The Council has an authorized maximum membership of fifty merchants, manufacturers, farmers, railroad and steamship men and bankers, representing all sections of the United States and collectively standing for the general interest of all elements engaged in foreign trade.

Non-political and non-partisan, its function is investigatory and advisory, and it seeks effectively to co-operate with other organizations in the encouragement of sound national foreign trade policy. Through its committees the Council is constantly investigating, and from time to time publicly reports upon problems arising in oversea commerce.

The membership of the Council is as follows:

CHAIRMAN: JAMES A. FARRELL..President, United States Steel Corporation, New York City
TREASURER: WALTER L. CLARK.....New York City
SECRETARY: ROBERT H. PATCHIN.....New York City
JOHN J. ARNOLD.....Vice-President, First National Bank, Chicago, Ill.
WILLIS H. BOOTH.....Vice-President, Security Trust & Savings Bank, Los Angeles, Cal.
J. A. G. CARSON.....President, Carson Naval Stores Co., Savannah, Ga.
E. A. S. CLARKE.....President, Lackawanna Steel Co., New York City
SAMUEL P. COLT.....President, United States Rubber Co., New York City
MAURIE COSTER.....Managing Director, Westinghouse Elec. Exp. Co., New York City
JOHN CROSBY.....Washburn-Crosby Co., Minneapolis, Minn.
F. G. CROWELL.....Vice-President, Hall-Baker Grain Co., Kansas City, Mo.
ROBERT DOLLAR.....President, The Robert Dollar Co., San Francisco, Cal.
J. J. DONOVAN.....Vice-President, Bloedel-Donovan Lumber Mills, Bellingham, Wash.
JOHN F. FITZGERALD.....Boston, Mass.
J. ROGERS FLANNERY...Chairman, Pittsburgh Foreign Trade Commission, Pittsburgh, Pa.
P. A. S. FRANKLIN.....Vice-President, International Mercantile Marine, New York City
L. S. GOLDSTEIN.....New Orleans Association of Commerce, New Orleans, La.
LLOYD C. GRISCOM.....New York City
B. F. HARRIS.....Farmer, Champaign, Ill.
FAIRFAX HARRISON.....President, Southern Railway Co., Washington, D. C.
H. G. HERGET.....Pekin Wagon Co., Pekin, Ill.
LOUIS W. HILL.....Chairman, Great Northern Railway Co., St. Paul, Minn.
HENRY HOWARD.....Vice-President, Merrimac Chemical Co., Boston, Mass.
CHARLES E. JENNINGS.....President, C. E. Jennings Co., New York City
ALBA B. JOHNSON.....President, Baldwin Locomotive Works, Philadelphia, Pa.
D. W. KEMPNER.....Galveston Cotton Exchange, Galveston, Tex.
CYRUS H. MCCORMICK.....President, International Harvester Corporation, Chicago, Ill.
J. R. MCWANE.....President, American Cast Iron Pipe Co., Birmingham, Ala.
H. C. LEWIS.....General Manager, National Paper and Type Co., New York City
CHAS. H. MUCHNIC....Vice-President, American Locomotive Sales Corporation, N. Y. City
BARTON MYERS.....President, Chamber of Commerce, Norfolk, Va.
M. A. OUDIN.....Foreign Manager, General Electric Co., Schenectady, N. Y.
WILLIAM PIGOTT.....President, Seattle Car & Foundry Co., Seattle, Wash.
WELDING RING.....Mailler & Quereau, New York City
JOHN D. RYAN.....President, Anaconda Copper Mining Co., New York City
WILLIAM H. RUSSE.....President, Russe & Burgess, Inc., Memphis, Tenn.
W. L. SAUNDERS.....Chairman of Board, Ingersoll-Rand Co., New York City
CHARLES A. SCHIEREN.....President, Charles A. Schieren Co., New York City
WALLACE D. SIMMONS.....President, Simmons Hardware Co., St. Louis, Mo.
WILLARD STRAIGHT.....Vice-President, American International Corp., N. Y. City
G. F. SULZBERGER.....Sulzberger & Sons Co., Chicago, Ill.
STEWART K. TAYLOR.....President, The S. K. Taylor Lumber Co., Mobile Ala.
EUGENE P. THOMAS.....President, U. S. Steel Products Co., New York City
F. A. VANDERLIP.....President, National City Bank, New York City
DANIEL WARREN.....Vice-President, American Trading Co., New York City
J. H. WHEELWRIGHT.....President, Consolidation Coal Co., Baltimore, Md.
THEO. B. WILCOX.....President, Portland Flouring Mills Co. Portland, Ore.
J. N. WILLYS.....President, The Willys-Overland Co., Toledo, Ohio
Office of Council, India House, Hanover Square, New York City

CO-OPERATION IN FOREIGN TRADE

The position of the National Foreign Trade Council on the principle involved in the Webb Bill, H. R. 16,707 is declared in the following resolutions adopted by the First National Foreign Trade Convention, Washington, D. C., May 27-28, 1914, as follows:

"*Whereas,* Throughout the markets of the world combinations of our competitors are encouraged by their Governments, and

"*Whereas,* Our anti-trust laws, though powerless to forbid foreign combinations against us, nevertheless, purport to regulate foreign commerce and apparently forbid American exporters to co-operate in the development of our foreign trade; now therefore, be it

"*Resolved,* By the National Trade Convention, a non-political, non-partisan gathering representing in the aggregate millions of Americans, both employers and workmen, throughout the United States, whose welfare depends upon the successful competition of American exporters abroad.

"That we urge Congress to take such action as will facilitate the development of American export trade by removing such disadvantages as may be now imposed by our anti-trust laws, to the end that American exporters, while selling the products of American workmen and American enterprise abroad, and in competition with other nations, in the markets of the world, may be free to utilize all the advantages of co-operative action in coping with combinations of foreign rivals, united to resist American competition, and combinations of foreign buyers equipped to depress the prices of American goods."

Necessary Even Before War

The foregoing declaration was joined in by four hundred American business men representing the producing, manufacturing, merchandising, transportation and banking elements engaged in, or affected by, foreign trade. Representing all sections, they declared for freedom to co-operate in foreign trade as a necessary part of a sound national foreign trade policy.

The declaration came at a time when industry languished, labor was idle, and machinery stood still. A steady increase of foreign trade, beginning in 1908, had been arrested. Exports in 1914 had fallen below 1913, but imports had increased. Natural commodities predominated in the exports and finished manufactures represented the enterprise of a comparatively small number of industries. The recent enactment of a competitive tariff had turned the eyes of many producers to foreign markets. Slack demand at home prompted investigation of opportunities abroad, for both those already embarked in export trade and those desirous of beginning, found across their path the obstacle of European government-encouraged export combinations enabled by co-operation to eliminate destructive competition, reduce the cost and increase the efficiency of foreign selling.

The natural tendency of American exporters was to resort to similar tactics but here they found themselves hobbled by doubt as to the legality of such co-operative effort under the American anti-trust laws. Legal opinion from bench and counsel, presented a welter of conflict. The average business man declined to take any chance of prosecution. Bankers declined to finance combinations, the legality of which was open to question. Manufactures, devised by American inventive skill and fabricated by American labor, well adapted to foreign needs remained unexported because the cost of introduction to the over-sea consumer was too great for the individual company, and co-operative effort on the European plan legally too hazardous. Meanwhile, leagues of foreign buyers skillfully playing one group of American producers against another were obtaining the products of American fields, forests and mines at less than domestic prices.

Europe's Advantage

Foreign manufacturers thus obtained American raw materials more cheaply than American manufacturers, a telling advantage in the ultimate contest to market the finished merchandise. The American producers thus exploited dared not co-operate. An incalculable advantage rested with Europe.

War-Trade Prosperity

The European war restored prosperity to the United States. Abnormal demand and prices for munitions, foodstuffs, and raw materials accelerated industry and recalled idle hands to the forge.

During the fiscal year ended June 30, 1916, exports exceeded imports by more than two billion dollars. Trade with neutral markets as well as Europe has grown. Export commerce is more diversified, a greater number of manufactured articles being sold where natural products formerly predominated. The full time and overtime operation of many mills and factories is due to foreign demand.

The principle that foreign trade is a vital element in domestic prosperity is daily demonstrated. An unprecedented proportion of American labor and invested capital is now dependent upon foreign markets. The outstanding development of the last two years has been the entry of smaller manufacturers and merchants into export trade. Factories once content to serve the home market alone have grasped oversea opportunities and have gained a wider outlet as a balance wheel against domestic depression. Workmen once indifferent whether their handiwork was sold in Indiana or in India now realize that their employment partly depends upon sustained foreign demand.

Unprecedented Gold Reserve

European populations engrossed in war have been unable to produce the commodities necessary to pay us for supplying their demands and have liquidated their purchases in gold. The antebellum flow of American gold to Europe was reversed early in the war and our gold reserve has become the largest in the world's history, and as all bank credits are based on the gold reserve, loans and discounts have increased in proportion until there exists a structure of credit in domestic as well as foreign business supporting an expansion of business so active and diversified that there is not in the United States today a justifiably idle able-bodied man.

Discussing this question at the Third National Foreign Trade Convention Mr. Frank A. Vanderlip, President of the National City Bank of New York said:

Exports Necessary to Defend Gold Reserve

"So long as the war goes on, the world will be so tipped askew, in all probability, that the gold holdings of other countries will continue to fall into our lap. As the gold falls, it will be added to our reserves. As these reserves grow, so will our credit structure based upon them. When the war is ended, we will find all Europe depleted of its gold, staggering under a weight of inflated bank and government paper and under the direct stress to rebuild its stock of gold. The point of attack will be our gold reserves. The methods will be *every means known to trade and commerce by which merchandise, securities and credits can be exchanged for gold.*

"The laws of political economy will be on the side of the attack. A plethora of gold, such as we will have, always means rising prices. We will establish a price basis here which will make us a good market to sell in and a bad market to buy in. We are now advancing our labor costs, and that and every other element that enters into production will, under the influence of this great increase on our gold reserves, tend toward high market values. If we find ourselves, when conditions start again toward the normal, to be the market where prices are the highest, where the cost of production is the greatest, and where the interest rate is the lowest, the road will be open for attack upon our gold reserves. If that attack is successful, then the whole credit structure that will have been reared upon it must be rudely reduced, for the reduction in credits must be many fold greater than the loss of gold.

"Efforts in the way of defense, such as excessive reserves or short-term foreign investments, must be as nothing when compared to what is possible in the form of credits created by exports of produce and merchandise."

Fortuitous Element in Present Commerce

In 1913 the per capita foreign trade of England was $149., of Germany $79., and of the United States only $44. In 1916 it is estimated that that of the United States will be $63. or $58. without ammunition and firearms.

This excess of export trade over the normal rests upon the following circumstances:

(a) Abnormal war demand and prices for munitions, foodstuffs and raw materials.

(b) Elimination of normal European competition through occupation of European factories in munitions production.

(c) Loss of labor through enlistment or conscription and belligerent restriction of normal exportation.

(d) Curtailment of investment of European capital in neutral markets, normally a stimulus to European export trade.

Effect of Peace Upon Export Trade

These abnormal conditions having prevailed for nearly two years, many Americans are in danger of relying upon them as permanent. No greater fallacy is possible than to neglect to expect, after the war, the following developments:

(a) Cessation or war-demand and prices for munitions, reduction of prevailing high prices for foodstuffs and raw materials by reason of restored European competition, normal transportation and international movement of raw materials.

(b) Resumption of normal European competition in home and neutral markets by reason of return of soldiers to industry and the lifting of military embargoes from exportation.

(c) Renewed activity of European export and import combinations with increased governmental support and possibly preferential tariff and navigation arrangements under economic alliances.

(d) Renewal, as rapidly as business conditions and national, or even international, fiscal policy will permit, or European investment in neutral markets, the most effective method of creating a foreign preference for merchandise of lending nations. European war finance has been moulded to protect trade-winning investments; their nourishment will not be neglected with peace.

Against the foregoing adverse element must be set the demands of renewed peace activities, return of confidence, demand for materials for immediate reconstruction of devasted districts and revival of development enterprises.

Europe's accustomed instrument for these activities will be co-operative effort beginning with cartels and trade associations of producers, manufacturers, exporters and bankers re-inforced by the backing of the State, and, unless the discussions with which industrial Europe now vibrates shall fail, supplemented by economic alliances succeeding the war alliances now in force. The liberty which rivals and customers of American exporters have enjoyed to co-operate has produced highly organized foreign selling organizations constituting the apex of a wedge forced by mobilized industrial, transportation and governmental resources into foreign markets.

Co-operation Versus Compelled Competition

Continuation of the present condition spells European co-operation industrial and governmental versus American compelled competition.

This spectacle prompted another speaker at the Third National Foreign Trade Convention to say:

> "Imagine a squad of recruits, responding patriotically to their country's call for foreign service, paying out of their own pockets for their equipment and training, studying in solitude the use of their equipment with no assistance from the Government except a correspondence course of instruction, and then, without ever having had any company or battalion drill, being sent to the front with the plaudits and best wishes of their grateful country and with the warning that, if they ever fight or even drill as a co-ordinated army, or in any way except as unrelated individuals, they will be liable, when they return home, to court martial and public disgrace! That is the situation of our exporters today." (Gilbert H. Montague, Third National Foreign Trade Convention, New Orleans, January, 1916.

Character of American Exports

The need of unquestioned right to operate is shared by two main classes of American exports. In the normal year of 1913, the United States exported $2,448,000,000 worth of products of raw manufactures which, from the standpoint of the effect of organized foreign competition, may be divided as follows:

Raw and partly manufactured products...	$1,676,000,000
Manufactured products	772,000,000

or about 68 per cent. raw and 32 per cent. manufactured.

Since Europe's existence in the industrial world largely depends upon importation of raw materials and re-exportation of a considerable portion of them in far more valuable finished manufactured form, European co-operation is used as a two-edged sword to cut the American prices of raw and partly manufactured products and to under-sell or otherwise defeat American export manufacturers. It is significant that of the $772,000,000 of manufactured exports in 1913, $430,000000, or nearly sixty per cent. are included in the three classifications: "Agricultural implements," "mineral oil," and "iron and steel," the three lines of industry built up by large corporations

based upon the principle of co-operation and possessing capital, resources and ability to withstand initial losses comparable to the cartels and co-operative selling organizations of Europe. But this advantage of organization for foreign trade is not enjoyed by many industries of moderate size whose administration and labor require a foreign outlet.

The enactment of permissive legislation for co-operation in export trade is urged by this Committee for the following nationally necessary purposes.

Conservation of Natural Resources

1. To conserve natural resources of the United States and prevent their being used to halt American export trade now vital to domestic prosperity.

2. To extend export of manufactured products of American labor and industry.

The United States, in 1913, exported $586,000,000 worth of raw cotton, $490,000000 worth of foodstuffs, agricultural food products and animals, $107,000,000 worth of forest products, and $248,000,000 worth of metals and minerals. These were the basis of vast manufactured merchandise sold in competition with the United States in the world's markets.

Foreign Control of Copper Prices

"In ten years ending 1913, a number of large copper producing companies of the United States sold to their several selling agents:

5,560,000,000 lbs. of copper, of which
2,580,000,000 lbs. was sold to domestic consumers, and
2,980,000,000 lobs. to foreign consumers,

bringing a total of $821,000,000. in money. The foreign buyers paid an average price of 14.38 cents per lb. delivered at foreign ports; the domestic buyers, an average price of 15.21 cents per lb. delivered at home, or $0.83 per lb. more than the foreigners paid. If other producers sold at about the same average price, the foreign manufacturers who put labor and profit into our copper for the markets they were supplying had a handicap of $50,000,000, in that period as against the American manufacturers, in spite of the fact that producers of raw copper have had no tariff protection or any governmental help to keep domestic prices higher. The handicap is simply the result of the advantage combined foreign buying has had as

against competitive selling, and the domestic manufacturer could not take the same advantage because the law of his country was holding him and the foreigner's law was pushing him." (John D. Ryan, President, Anaconda Copper Mining Company, First National Foreign Trade Convention, Washington, D. C., 1914.)

Federal Trade Commission View

Congress two years ago created the Federal Trade Commission with broad powers to inquire into the necessities of the foreign trade. Those two years have opened great opportunities and disclosed great future obstacles. As a result of the most extensive canvass ever made among business men the Commission finds:

"In various markets, American manufacturers and producers must deal with highly effective combinations of foreign buyers. Thus, exporters of lumber find such combinations in Australia and on the continent of Europe. Cotton seed products are handled by combinations of buyers in Holland, Denmark and Germany. Combinations of British coal brokers fix the contract price for bunkering ships at Newport News, Va. Four London firms known as the Fixing Board daily set the price of silver for the world and American mining companies must sell their silver for either the English or the great Indian market to one of these four houses.

"Our forests constitute a rich source of timber, our coal measures are among the greatest known, our phosphate rock deposits parallel the potash beds of Germany, our copper mines produce more than half the world's output and are necessary for the world's demands. Other nations take measures to conserve their natural resources."

Cheap Raw Materials Sharpen European Competition

"This country which is the great storehouse of the natural resources of the world, has practically thrown away its substance, robbed its mines, its forests and its soil, and sold its natural resource in competition with itself, one forest tract with another, one mine with another, and one farm with another, in the severest and bitterest kind of competition everywhere in the world." (John D. Ryan, President, Anaconda Copper Mining Company, to the Federal Trade Commission, June 3, 1915.)

Whenever the export price of American raw materials is forced below the domestic level, the chances are increased for the European

manufactured merchandise derived from such raw material to hold neutral markets against similar American merchandise. At best, the exportation of raw materials is less profitable to the nation than export of finished manufactures in which labor represents a large proportion of value. The disadvantage is compounded if foreign interests can buy our natural resources more cheaply than Americans and utilize the manufactures therefrom fabricated to block the wider outlet which American industrial enterprises and labor require in the world's markets. *

The great industrial nations overlook no opportunity to energize their raw materials in extension of foreign trade. The recent economic conference of the Entente Allies at Paris agreed that "the Allies are to conserve all their natural resources during the period of reconstruction after the war for common use."

An Example of German Policy

When, several years ago, the formation of a private potash selling association became doubtful, the Prussian Minister of Commerce publicly declared that the prospective loss to domestic production might reach $5,000,000 annually. "In such a case," he said, "I have to consider whether the flowing off of profit towards foreign countries during the time when there is no syndicate, could not be prevented." And he drew up a bill designed to prevent any condition arising in which foreigners would derive a greater benefit from the potash deposits than Germans themselves. Americans were obliged to pay for German potash a price which safeguarded every related German interest, but meanwhile Germany was getting its cotton, wheat, corn, oil, metals and lumber from us by whatever device it found effective to hammer down American prices. The simple truth is that under existing conditions, the United States is provisioning and equipping its foreign trade rivals more cheaply than it provisions and equips itself.

* It is a daily occurrence to get a cable from our London representative saying that so and so is in the market for 1,000 tons of copper and will give us the business on equal terms with "A" who is our competitor and whom the buyer represents as bidding ten shillings under us. Now "A's" office is only two blocks from my office but I don't dare call him on the telephone to ask whether that consumer in England or Germany is telling the truth. I might be violating the law. The chances are nine in ten that the foreign consumer is not telling the truth but is simply stating that somebody is quoting ten shillings under for the purpose of trying to bring our man down to the basis of the quotation he wants. But we fight one another and the consequence is that the buyer gets the advantage." (John D. Ryan, Pres. Anaconda Copper Mining Co. before the Federal Trade Commission, New York, June 3, 1915.)

Co-operation Necessary to Expand Exports

"One week of European war did more than ten years of academic discussion to convince American people that foreign trade is a vital element in domestic prosperity." (James A. Farrell, President U. S. Steel Corporation, and Chairman of the National Foreign Trade Council.)

The American industries presenting the most unbroken record of prosperity and sustained labor employment are those which regularly market oversea from ten to thirty-five per cent. of their product.

"It is clearly demonstrable that the average cost of manufactured products in Germany, England, France, Japan, and other countries is greatly below that of America. It is equally demonstrable that the average cost of distribution of their manufactured products by foreign countries is much lower than that of American products due, in a large measure, to perfect freedom to conduct their foreign trade without the hampering restrictions which lie upon American manufacturers and producers.

Reduces "Overhead"

"With a reduction in the ratable cost of distribution, that is the overhead, it would be possible to reduce the selling price if that were necessary to meet the foreign competition. In many situations, on the other hand, by lessening the destructive competition, selling prices abroad might be raised. Co-operation which obtained for our products maximum prices from the foreign buyer at a minimum expense to our exporters would be an economic advantage to American industries.

"Since export co-operation would lower the cost of distribution and, by the added output, the cost of production as well, the home consumer in consequence would benefit to the extent that the manufacturers were able to reduce their unit costs." (M. A. Oudin, Manager Foreign Department, General Electric Company, Schenectady, N. Y., Third National Foreign Trade Convention, New Orleans, January, 1916.)

Since the American wage scale is the highest in the world and even the inroads of war upon the artisan class are unlikely to raise the European scale to its level, our foreign trade labors under an initial disadvantage which can be offset only by greater efficiency in

manufacture and distribution. The legal doubt which retards formation of co-operative foreign selling organizations is a bar to the achievement of the efficiency attained by European rivals.

"Everyone engaged in foreign trade knows that co-operation, concentration and capital are needed to secure a large volume of export trade. * * * It takes years of time, volumes of money and much patience to get established and when success comes a strong organization must be maintained and a large volume of business done in order to show a profit on the balance-sheet. The sooner American merchants realize this the better, for the export trade of the United States is well worth having." (W. L. Saunders, at the Second National Foreign Trade Convention, St. Louis, January 1915)

The principle of "amending the Sherman Act to allow a greater degree of co-operation in the conduct, and for the protection of the foreign trade" was approved in a referendum of the Chamber of Commerce of the United States, 536 organizations voting in favor of it, and only 67 against.

In February 1915 a special committee of the Chamber of Commerce of the United States endorsing the principle now embodied in the Webb bill declared that the necessity for this legislation existing before the war "will acquire a far greater significance when the nations now at war, whose foreign trade has been curtailed, again enter into competition for foreign markets. The situation created by the unexpected war in Europe gives ground for urging immediate action."

The committee on the Federal Trade Commission of the Merchants Association of New York recently declared:

"The Webb bill promises freedom to American export trade, opportunity to smaller American manufacturers, and stimulus to our entire American commercial and industrial life; and the prompt passage of the bill by Congress with the modifications above suggested, (technical details) is, therefore, strongly urged."

Specific Advantages of Co-operation

In exportation of manufactures, whether competing or non-competing, co-operation will permit:

Maintenance of highly organized export service at minimum cost to participants, employment of American advantages in advertising, technical demonstration and "follow-up" methods.

Improved credit information and financing of foreign sales, more advantageous traffic contracts through greater and regular tonnage, superior facilities for customs brokerage, warehousing, etc.

Assumption, by the co-operative organization, of credit extension which manufacturers dependent upon a quick turnover of capital, are unable to provide.

Survival of initial losses, fatal to an individual company, which are sometimes incurred before American goods gain a foothold.

Division of foreign business upon an agreed basis adapted to the mutual interest of all participants from the standpoint of sustained labor employment, and ability to produce at a price to meet foreign competition.

Co-operation Among Competitors

Co-operation among competitors in a given line will permit retention of the highest talent for foreign representation. This is necessary for engineering products, the sale of which is often related to development projects by governments or large financial interests. The maintenance abroad of representatives with wide technical experiences, initiative and commanding personality, is beyond the means of any save the largest corporations and is not justified by the volume of business available to a single company dividing the field with others. Co-operating competitors could reduce the overhead and increase the efficiency of export sales by division of orders so that each competitor will fill only those orders he is best fitted to execute in the quickest time at the lowest cost.

American manufacturers in the same line frequently engage in destructive competition for foreign construction contracts. Where elaborate plans must be submitted, the expense spells loss for those who fail and decreases the profit of the successful. Bidders on railway and power projects sometimes spend $100,000 in preparation of bids. Other advantages are improved distribution of comparatively small articles manufactured by different factories, none of which may be in sufficient demand to warrant the establishment of individual selling agencies and all of which must meet with keen foreign competition in one form or another, also improved handling of articles of constant consumption sold at low prices and at small profit on which service and ability to handle promptly and regularly are

of prime necessity. Again, orders too large for a single factory promptly to fill can be effectively handled by a co-operative organization representing a number of competitors.

Co-operation by Non-Competitors

Joint effort by manufacturers and merhcants in kindred but not competing lines would permit the following economic advantages:

> Development of "full lines" as, for instance, axes, hatchets, carpenters' tools, and building hardware or (as has been successfully tried) paper, type, printing presses, machinery, ink, stationery, other printing supplies. A first class salesman can be a specialist in all articles of a kindred line. Arriving, for instance, at Bahia, Brazil, he will discover in a day that no demand exists for printing presses, but can employ time, while waiting for the next ship, in selling paper, type, or ink. Experienced foreign traders attach the greatest importance to the handling of full lines, one article sells another, and salesmen are kept constantly employed, a more direct representation by abler selling forces than individual companies can afford.

Doubt Hinders Growth of Export Trade

It is not within the province of this committee to present a legal discussion of the extent to which the anti-trust laws apply or do not apply to export trade.* A condition and not a theory exists. The debates of Congress reveal no intention by the framers of these statutes to throttle export enterprise and the foreign trade was specifically exempted from certain provisions of the Clayton Act. This committee's inquiries and the evidence submitted at three National Foreign Trade Conventions support the conclusions of the Federal Trade Commission, namely:

"Doubt as to the application of the anti-trust laws to export trade now prevents concerted action by business men in export trade even among producers of non-competing goods."

And the Chairman of the Federal Trade Commission, Hon. Joseph E. Davies, speaking with the knowledge of the responses made by 30,000 corporations, firms and individuals to its questionaire told five hundred exporters at New Orleans:

"Our investigations disclose that doubt as to the legality of such enterprise amount in many instances to prohibition of any action in the foreign market. This belief is undoubtedly one of the

* See Appendix "B."

factors in the situation which hinder the development of foreign trade."

The right of co-operation should be sufficiently unrestricted to permit whatever organization is required, in good faith, to forward export trade.

National interests no less than the welfare of certain industries and the labor thereupon dependent require that the right of co-operation equally extend to competing and non-competing lines without regard to extent of operation or capital and that the organization of co-operative effort possess no compulsory features as to participants not characteristic of the formation of the ordinary corporation, except that for filing essential information with the Federal Trade Commission.

The Federal Trade Commission has pertinently called attention to apprehension that "co-operative export organizations may be used to exploit the home market and they may be used unfairly against individual American exporters in foreign trade."

This committee agrees with the Federal Trade Commission that the enforcement of the anti-trust laws will be sufficient to prevent co-operative export organizations from reacting in an unreasonable restriction of domestic commerce. This safeguard is necessary and right.

For the protection of individual American exporters from possible oppression at the hands of a more formidable co-operative export organization, the Federal Trade Commission recommended and this bNl proposes specifically to extend the laws against unfair competition to the export trade. Section 4 proposes to throw around the American exporter wherever in the world he goes, and to whatever other laws he may become subject, the shelter of that provision of the Federal Trade Commission Act which reads "unfair methods of competition in commerce are hereby declared unlawful." Section 4 of the proposed bill H. R. 16,707 provides:

> "The words 'unfair methods of competition' wherever used in the act entitled 'An Act to Create a Federal Trade Commission, to Define its Powers and Duties and for other Purposes,' approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."

Section 4 Might Favor Foreign Rivals

This language will establish a double standard of legal control for the American exporter. Like his foreign rivals, he will be subject to the laws of whatever market he does business in, but unlike them, he will also be subject to the unfair competition laws of the United States. The authors of this bill obviously intended it to apply only as between interests exporting from the United States but the language, if enacted, would permit a *European competitor* of an American co-operative organization exporting, for instance, to Argentina, to invoke the *American* unfair competition laws against the *American* co-operative organization for a practise wholly legal under Argentine law. The American organization, on the other hand, would have no recourse against a European organization for an identical act. Such a condition would be inequitable. It would expose the American co-operative organization to a possible harassment more onerous than the disadvantage which it is the purpose of this proposed law to remove.

Among those who have discussed this phase of the question, it has been suggested that the section be amended to limit the power to invoke the unfair competition laws to interests engaged in export trade from the United States. This Committee recognizes the circumstances under which the Federal Trade Commission has urged the specific extension of the unfair competition prohibitions to export trade, but the cause of freeing American exporters from restrictions not borne by their competitors will not be completely served by the Committee if it fails to call attention to certain difficulties to which the extension of these laws oversea may lead.

In the first place, it has not been fully established what constitutes "unfair methods of competition." Section 5 of the Federal Trade Commission Act says that "unfair methods of competition in commerce are hereby declared to be unlawful." It remains for the jurisprudence of unfair competition to be developed by the Federal Trade Commission. The rulings thus far made by that body are general in terms. The cessation of certain practises complained of by companies invoking the unfair competition laws has removed the necessity of the Commission making guiding rulings and specifically establishing the nature of unfair competition.

The conditions in foreign markets differ greatly from those in the domestic trade. The method of enforcement of the unfair competition prohibitions at home is through complaint by corporations,

firms and individuals, followed by investigations and hearings by the Commission. Where the complaint is found to be justified, an order for the offending party to desist is entered. In highly standardized domestic business, the facts can be ascertained at a hearing of the parties in dispute or by investigation through the Commission's agents. Will this be practical in foreign trade where the acts in dispute have been, perhaps, performed on the other side of the world? The complexity of the movement of American merchandise from the factory in this country to the ultimate consumer abroad is bewildering. An impartial consideration of the question compels recognition of the fact that many practises which may come to be regarded as unfair competition in the United States where facilities exist for equal treatment of all customers by reason of perfected transportation, banking arrangements, etc., may remain wholly legal in and endorsed by the usuage of foreign markets.

This Committee would ask those responsible for the enactment of this legislation carefully to consider the ultimate result, whether the meager possibility of one American interest endeavouring to oppress another in foreign trade justifies the envelopment of the entire export trade of the United States in a law which, as the debates in Congress show, was enacted to meet conditions peculiar to the domestic trade alone. The literature of unfair competition is drawn almost entirely from the circumstances of the domestic trade. *It should not be forgotten that the wide public support given this bill and the recommendation of the Federal Trade Commission in its behalf was produced by public appreciation of the fact that American exporters are hobbled. The public has given a clear expression of its desire that the hobble should be removed. The issue cannot be better summarized than in the words of the late James J. Hill:*

"In the vast pool of the world's activity, where the material, the worker, the machine, the method, fly from one end of the earth to the other at call, only a purblind nation can dream of basing its future on anything less commanding than equality or superiority in the elements of production; including, of course, the wages of labor and the remuneration of capital."

APPENDIX A.

64TH CONGRESS, 1ST SESSION.

H. R. 16707

IN THE HOUSE OF REPRESENTATIVES.

JUNE 28, 1916.

Mr. Webb introduced the following bill; which was referred to the Committee on the Judiciary and ordered to be printed

A BILL

To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production or manufacture of such goods, wares, or merchandise, or any act in the course of production or manufacture.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States,

or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any States or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination by contract or otherwise of two or more persons.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such trade, or an agreement made or act done in the course of export trade by such association, provided such agreement or act is not in restraint of trade within the United States.

SEC. 3. That nothing contained in section seven of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade.

SEC. 4. That the words "unfair methods of competition" wherever used in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter for the sole purpose of engaging in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a written statement setting forth the location of its offices or places of business, and the names and addresses of all its officers, and of all its stockholders, or members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be

recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Appendix B.

The Anti-Trust Law and the Export Trade.

Collective action has so seldom been attempted by exporters that there is a dearth of judicial decision on the point.

In *Thomsen* v. *Union Castle Mail S. S. Co.*, 166 Fed. 251, C. C. A. 2nd C., 1908, which arose under the anti-trust law, the court said, (p. 253):

> "That the combination was formed in a foreign country is likewise immaterial. It affected the foreign commerce of this country, and was put into operation here. The complaint, therefore, states an unlawful combination—a thing 'forbidden or declared to be unlawful' by the Act."

In *United States* v. *Pacific and Arctic Company*, 228 U. S. 87 (1913) the Supreme Court said (p. 105-106):

> "The next contention of defendants is that as part of the transportation route was outside of the United States the Anti-trust Law does not apply. The consequences and, indeed, legal impossibility are set forth to such application, and, it is said, 'makes it obvious that our laws relating to *interstate* and *foreign* commerce were not intended to have any effect upon the carriage by foreign roads in foreign countries, and . . . . it is equally clear that our laws cannot be extended so as to control or affect the foreign carriage.' This is but saying that laws have no extra-territorial operation; but to apply the proposition as defendants apply it would put the transportation route described in the indictment out of the control of either Canada or the United States. These consequences we cannot accept. The indictment alleges that the four companies which constitute the White Pass & Yukon Route (referred to as the railroad) and owned and controlled by the same persons, entered into the combination and conspiracy alleged, with the intention alleged, with the Wharves Company and the defendant steamship companies. In other words, it was a control to be exercised over transportation in the Untied States, and, so far, is within the jurisdiction of the laws of the United States, criminal and civil. If we may not control foreign citizens or corporations operating in foreign territory, we certainly may control such citizens and corporations operating in our territory, as we undoubtedly may control our own citizens and our own corporations."

In *United States* v. *Hamburg-Amerikanische Packet-Fahrt-Actien-Gesellschaft, et al*, 200 Fed. 806, (1911), arising under the anti-trust law upon a motion on demurrer heard by four Circuit Judges of the Circuit of Appeals of the Second Circuit, the court said (p. 806-807):

> It may be accepted without discussion that transportation of passengers between this country and Europe forms a part of the commerce of the United States with foreign nations. It is also clearly established that Congress has power to prohibit all contract, combinations and conspiracies in restraint of such part of the foreign commerce of the United States. The real question here is not one of power but of interpretation. The inquiry is whether that which is charged against the defendants comes within the provisions of the anti-trust statute and this inquiry has two phases:
>
> (1) Does the agreement in question directly and materially affect foreign commerce?
>
> (2) Does such agreement with the acts stated in the petition amount to an unlawful contract, combination or conspiracy?
>
> "The agreement affects foreign commerce because its operation must necessarily divert a part thereof, viz.: the business of carrying steerage passengers, from the natural channels of free competition into fixed channels assigned to the parties. The different lines obtain not that which would come to them from their separate efforts but prescribed and certain percentages of the traffic.
>
> "The agreement directly and materially affects foreign commerce and is partly intra-territorial because it is to be carried out in part in the United States. Confining ourselves to east-bound traffic, it is evident that the contract contemplates the solicitation of business, the making of contracts of carriage, the taking on board of passengers, and the actual commencement of transportation within the territory of the United States. It requires acts to be done in this country; such acts are as material and essential as those to be performed abroad, and the part of the contract requiring them cannot be separated from the remainder.
>
> "The prohibitions of the anti-trust statute apply broadly to contracts in restraint of trade or commerce with foreign nations. This contract directly and materially affects such commerce and if it unlawfully restrains it, it comes within the

statute. We see nothing to warrant the contention that the act should be performed wholly within the territorial jurisdiction of the United States nor—if it were for us to consider—any reason for concluding that a broader construction would lead to international complications.

"As the contract directly and materially affects the foreign commerce of this country by being put into effect here, it is immaterial where it was entered into or by what vessels it was to be, or has been performed. Citizens of foreign countries are not free to restrain or monopolize the foreign commerce of this country by entering into combinations abroad nor by employing foreign vessels to effect their purpose. Such combinations are to be tested by the same standard as similar combinations entered into here by citizens of this country. The vital question in all cases is the same: Is the combination to so operate in this country as to directly and materially affect our foreign commerce. As said by the Circuit Court of Appeals for this Circuit in Thomsen *v.* Union Castle Mail S. S. Co. 166 Fed. 251, 92 C. C. A. 315.

" 'That the combination was formed in a foreign country is likewise immaterial. It affected the foreign commerce of this country and was to be put into operation here.' "

American Banana Company v. *United Fruit Company,* 213 U. S. 347 (1909) is sometimes cited to the contrary. But there, as the Supreme Court explained (p. 357-358):

"The substance of the complaint is that, the plantation being within the *de facto* jurisdiction of Costa Rica, that State took and keeps possession of it by virtue of its sovereign power. But a seizure by a State is not a thing that can be complained of elsewhere in the courts."

Referring to this case in *United States* v. *Nord Deutscher Lloyd,* 223 U. S. 512 (1912) arising under another statute the Supreme Court said (pp. 517-518):

"The statute, of course, has no extra-territorial operation, and the defendant cannot be indicted here for what he did in a foreign country. *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347. But the parties in Germany could make a contract which would be of force in the United States. When, therefore, in Bremen, the alien paid and the defendant received the 150 rubles for a return passage they created a condition which was operative in New York. If, in that city, the company had refused to honor the ticket the alien could there have

IMPORTANT NOTICE

Read this in connection with report.

Since this report was printed the Webb Bill (H. R. 16,707) has been somewhat amended and favorably reported to the House as H. R. 17,350.

One of the amendments to Section 4 meets the contention of this report that Section 4 as contained in H. R. 16,707 would permit a foreign competitor of an *American* co-operative organization to invoke the *American* unfair competition prohibitions against the *American* co-operative organization for an act wholly legal in the country where committed. In the amended bill H. R. 17,350 the application of the unfair competition prohibitions of the Federal Trade Commission Act is confined to between those engaged in export trade, i.e., export trade from the United States.

The following text of H. R. 17,350 should be carefully compared with its earlier form, H. R. 16,707, in appendix A, pp. 20-23.

H. R. 17,350.

A BILL

To promote export trade, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "export trade" wherever used in this Act mean solely trade of commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production or manufacture within the United States or any Territory thereof of such goods, wares, or merchandise, or any act in the course of such production or manufacture.

That the words "trade within the United States" wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States,

PAGE 2

or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word "association" wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

SEC. 2. That nothing contained in the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, shall be constructed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States.

SEC. 3. That nothing contained in section seven of the

[OVER]

Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the

PAGE 3

purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States in articles of the kind exported by the association whose stock is acquired or controlled.

SEC. 4. That the prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

SEC. 5. That every association now engaged solely in export trade, within sixty days after the passage of this Act, and every association entered into hereafter for the sole purpose of engaging in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorpora-

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tion and by-laws, and if unincorporated a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificates of incorporation or in its articles or contracts of association and of all contracts, agreements, and understandings had with any foreign or domestic association in regard to the conduct of or practices in foreign trade. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

enforced his rights. In like manner, if by reason of facts occurring in New York, the statute operated to rescind the contract, the rights and duties of the parties could there be determined, and acts of commission or omission, which, as a result of the rescission, were there unlawful, could there be punished."

The headnote in *United States* v. *Nord Deutscher Lloyd* above cited sufficiently states the rule applicable to this question (p. 512):

> "While a statute has no extra-territorial force, and one cannot be indicted here for that he does in a foreign country, the making of a contract in a foreign country may, as in this case, create a condition operative in this country, under which acts of omission or commission can be punished here. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, distinguished."

APPENDIX C.

In the hearings on the Webb bill a member of the Judiciary Committee inquired whether the formation of export selling combinations for the purpose of obtaining a better price for American commodities sold abroad would not tend to enhance domestic prices. In reply it was cited that in the suit of the United States Government against the United States Steel Corporaeion under the Sherman Law, the Federal Court for the District of New Jersey attributed the extension of the corporation's business to the following circumstances:

"Fifth, in gradually reducing its own overhead cost of foreign selling from about 3½% in 1901 to .8% in 1911.

"Sixth, in gradually increasing the price of such of its product as was sold in the foreign market from 1904, when the trade had gotten under way, to 1912, while it was at the same time decreasing the price of such of its product as was sold to consumers in the home market. These relative charges are shown by defendant's Exhibit (Vol. 2, p. 203), as follows: In 1904 the Steel Corporation sold such of its product as it exported at an average price of $27.22 per gross ton; by 1912 it was able to market them at $34.24. During the same period it was in 1904 receiving for such of its product as was sold in the home market an average of $41.44 per gross ton; by 1912 this price was reduced to $36.53." (223 Fed. Rep. 114.)

NOTE: It should be remembered that iron and steel marketed in the United States contains a greater proportion of highly finished product than the exports, and the domestic tonnage price is therefore greater. The significance of the above figures is that while export prices commanded as a result of co-operative foreign selling went steadily upward, domestic prices came steadily downward.

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